Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Verizon Wireless' Petition	)	
Pursuant to 47 U.S.C. § 160	)	WT Docket No. 01-184
For Partial Forbearance From the	)	
Commercial Mobile Radio Services	)	
Number Portability Obligation	)	

REPLY COMMENTS OF VERIZON WIRELESS

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EXECUTIVE SUMMARY

Verizon Wireless filed its petition for forbearance from the CMRS Local Number Portability ("LNP") mandate after determining that (1) thousand block number pooling can be achieved without LNP and, (2) the significant burdens of implementing LNP are not justified by any competitive or public interest benefits. The wireless industry uniformly and vigorously supports permanent forbearance. Resellers and some state utility commissions oppose the petition, but fail to provide any factual support for their assertion that wireless LNP is necessary to promote competition or to protect the public interest. The uncontested facts in the record demonstrate that:

- Wireless carriers can participate fully in thousand block number pooling without providing LNP.
- The costs of providing LNP are significant, both in terms of financial and personnel resources.
- Wireless LNP is not necessary to protect consumers or the public interest. The CMRS market is fiercely competitive. Any benefits that might be achieved from wireless LNP are speculative at best. Over 20 million wireless customers changed service providers in 2000 without LNP, and wireless prices have declined steadily.
- Other critical mandates, including pooling, E-911, CALEA and Priority Access demand focused investments of financial and personnel resources.

The Commission has an obligation under Section 10 to re-examine the wireless LNP mandate in light of competitive conditions today and competing policy priorities. Verizon Wireless has demonstrated that forbearance from the wireless LNP mandate is in the public interest, even more so now than when the Commission approved temporary forbearance in 1999. Nothing in the comments proves otherwise.

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REPLY COMMENTS OF VERIZON WIRELESS

I. INTRODUCTION

> "[T]he Commission has an affirmative duty to work through, not whether forbearance is warranted, but whether the challenged regulation is warranted any longer."[1]

Wireless local number portability ("LNP") is no longer warranted. On the record before it, the Commission must forbear from enforcing the requirement that CMRS carriers provide LNP capability by November 2002. The market for wireless services is robustly competitive. There is no evidence that wireless LNP is necessary to ensure just and reasonable rates or to protect consumers or the public interest, the standard for forbearance in Section 10 of the Communications Act. Under present market conditions, and without a statutory mandate, a regulatory requirement of this sweeping scope is not justified. Opponents of forbearance have presented no credible or concrete evidence to

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[1] *See* Dissenting Statement of (then) Commission Michael K. Powell, in the Matter of Implementation Section 254(g) of the Communications Act of 1934, as Amended, Petitions for Forbearance, CC Docket No. 96-61, Memorandum Opinion and Order, 14 FCC Rcd. 391 (1999) (hereinafter, "*Rate Integration Order*").

support the need for wireless LNP. To the contrary, LNP will impose significant costs and burdens on carriers and their customers.

Wireless carriers -- small, medium, large, urban, and rural -- consistently and fully support Verizon Wireless' petition for permanent forbearance.[2] These competitors agree that additional regulation is not necessary to facilitate competition in one of the most competitive industries in America. Wireless carriers want to continue to devote their resources to developing and delivering new products and services that will differentiate competitors and meet the demands of customers.[3] Verizon Wireless urges the Commission to forbear from extending the LNP obligation to wireless carriers, an obligation Congress mandated only for the landline industry.

The only opposition to the petition comes from a few state public utility commissions and resellers.[4] Some of the state opposition reflects an unfortunate misunderstanding of Verizon Wireless' petition and commitment to thousand block number pooling (TBNP).[5] To be clear: Verizon Wireless is committed to participate fully in TBNP by November 2002 and is not seeking any relief from this obligation. Verizon Wireless will implement the necessary LNP-related network infrastructure and communication system to enable it to both contribute and receive "contaminated" thousand number blocks and to pool numbers with any other carrier.

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[2] Dobson Comments at 1; Cingular Comments at 1; ALLTEL Comments at 1; AT&T Wireless Comments at 1; Rural Cellular Association ("RCA") Comments at 1; VoiceStream and US Cellular Joint Comments ("Joint Comments") at 1; Sprint PCS Comments at 1.

[3] RCA Comments at 6; AT&T Wireless Comments at 8; Cingular Comments at 3; Sprint PCS Comments at 6-7; Sprint Reply Comments at 9-10, Castañon Declaration at ¶ 38.

[4] The Association of Communications Enterprises ("ASCENT"), a reseller organization, and WorldCom are collectively referred to herein as "wireless resellers."

[5] New York State Department of Public Service ("NYPSC") Comments at 2; National Association of Regulatory Utility Commissioners ("NARUC") Comments at 2-3; New Hampshire Public Utilities Commission ("NHPUC") Comments at 10.

A few states and resellers also claim that wireless LNP is necessary to ensure competition, particularly with the *landline* market. This claim lacks any factual support and must be rejected. It also ignores the actions of Congress, which created elaborate mechanisms in the Telecommunications Act of 1996 (the "1996 Act") to facilitate landline competition, including adoption of a landline LNP requirement, but did not mandate wireless LNP.

Noticeably lacking from the state commission and wireless reseller comments is a recognition that wireless LNP is not cost-free to consumers. They merely assert (without empirical evidence) that most customers, if asked, would probably like to keep their numbers when switching providers. Aside from being irrelevant to a forbearance analysis (which must evaluate whether a mandate is "necessary" to protect consumers), this claim conveniently ignores the reality that the significant costs of wireless LNP must either be borne by consumers themselves, or absorbed by carriers. If carriers absorb these costs, scarce resources may be diverted from investments in upgrading call quality, improving network reliability, and developing new products. LNP, like every other mandate, forces tradeoffs, and opponents of forbearance simply pretend those tradeoffs do not exist.

Wireless carriers are working to implement other crucial regulatory mandates over the next year to promote public safety, law enforcement, number resource efficiency and even, as has most recently been brought into focus, national security. Mandates such as E911, CALEA, Priority Access, and number pooling demand focused investments of enormous personnel and financial resources by carriers and vendors; resources that should not be squandered on an LNP mandate that is not necessary to promote

competition nor to protect the public interest. Especially in this time of economic uncertainty, government mandates must be limited to those that are clearly needed to achieve measurable objectives and that will yield significant benefits. LNP does not qualify.

II. OPPONENTS OF LNP FORBEARANCE PROVIDE NO EVIDENCE THAT LNP IS NECESSARY FOR COMPETITION OR TO PROTECT THE PUBLIC INTEREST

All commenting facilities-based wireless carriers, regardless of size, agree that wireless LNP is not needed to enhance competition, either within the wireless industry or with wireline carriers. This fact is important, because it reflects an evaluation by each carrier (including newer entrants) that the potential of LNP to attract new customers is outweighed by the costs and burdens of implementing and managing LNP. The FCC's Competition Reports support this undeniable fact: the wireless industry is robustly competitive, by any standard of measurement, and has achieved this level of competition without LNP. Forbearance opponents fail to show that wireless LNP is necessary to promote competition or protect the public interest, but instead "ask petitioners to disprove a hit parade of merely speculative harms."[6]

A. LNP Is Not Necessary For Wireless To Wireless Competition

Forbearance opponents assert that wireless LNP will enhance competition, by relying on the seemingly self-evident proposition that some consumers, if given the opportunity to keep their phone number, would be more inclined to switch to a

[6] *See* Dissenting Statement of (then) Commissioner Michael K. Powell, *Rate Integration Order* at 6.

competitor.[7] But the mere fact that some consumers might be interested in a service does not mean it is a prerequisite to competition.[8] Under Section 10, the standard is clear. If the regulation is not "necessary" to ensure just and reasonable rates, for the protection of consumers, or to protect the public interest, it cannot stand.

1. Wireless Resellers

Wireless resellers oppose Verizon Wireless' petition on competition grounds. Although ASCENT has mined the *1999 Forbearance Order* for statements justifying the grant of forbearance only on a temporary basis, it cannot deny that the FCC nonetheless determined that wireless LNP was not necessary for competition when finding that the forbearance standard was met. The Commission rejected the claim that the ability of wireless customers to retain their telephone number was an important factor in their decision to switch wireless carriers.[9] The Commission also found that high churn rates suggested that lack of number portability was not a barrier to customers switching wireless carriers.[10]

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[7] *See generally* Iowa Utilities Board ("IUB") Comments at 2; Vermont Public Service Board ("VPSB") Comments at 4; Michigan Public Service Commission ("MPSC") Comments at 3; Public Utilities Commission of Ohio ("PUCO") Comments at 2; NHPUC Comments at 3.

[8] Indeed, there may be many services that consumers might prefer, such as free phones, but in the wireless market the Commission has wisely let the competitive market respond to consumer demand rather than impose heavy-handed regulation.

[9] *See Cellular Telecommunications Industry Association's Petition for Forbearance From CMRS Number Portability Obligations,* WT Docket No. 98-229, Memorandum Opinion and Order, 14 FCC Rcd 3092 at ¶ 34 (1999) *("1999 Forbearance Order*").

[10] ASCENT relies on a study from Hong Kong to support its arguments that the inability to change phone numbers is a major competitive constraint identified by wireless subscribers. ASCENT Comments at 8, 11-12. *See also* NHPUC Comments at 4 (citing Australian study). The Commission cannot rely on these studies of foreign markets because of considerable differences in domestic market conditions, legal mandates, population size, pricing levels, and technology.

These conclusions are even more valid today, because competition has intensified, as the FCC's own annual Competition Reports show.[11] When the FCC made the initial forbearance decision, competition from new PCS entrants was not as effective as it is today. Moreover, carriers and regulators envisioned that Calling Party Pays ("CPP") might become a widespread service that would align wireless services more closely with wireline services, and potentially foster customer attachment to wireless phone numbers.[12] Yet, CPP has largely been abandoned as carriers have moved toward providing larger "buckets of minutes."

Resellers' support for wireless LNP appears to be based on the faulty premise that it would enable resellers to move their entire customer base (or at least threaten to do so) among facilities-based providers whenever it suited their business ends.[13] But, portability accrues to the individual *end-user* customer, not resellers.[14]

The Commission has recognized a distinction between *number portability* and *resale number transferability*. In the 1995 *CMRS Interconnection* docket, the FCC referred to the act of resellers' porting their end-users' numbers to another facilities-based provider as *number transferability,* and sought comment on whether number

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11 Verizon Wireless Petition at 16-19.

12 *See Calling Party Pays Service Option in the Commercial Mobile Radio Services*, Notice of Inquiry, WT Docket No. 97-207, 12 FCC Rcd 17,693 (1997) (stating that the purpose of the NOI was to explore means of encouraging and facilitating competition in the local exchange telephone market.); *See Calling Party Pays Service Option in the Commercial Mobile Radio Services*, Declaratory Ruling and Notice of Proposed Rulemaking, 14 FCC Rcd 10,861 (1999).

13 ASCENT Comments at 13-14.

14 The Commission has made clear that end-users have the right to port numbers. For example, in the *Telephone Number Portability FNPRM,* the Commission stated that "[t]he ability of *end-users* to retain telephone numbers when changing service providers gives customers flexibility in the quality, price, and variety of telecommunications services they can choose to purchase." *Telephone Number Portability FNPRM,* CC Docket 95-116, 11 FCC Rcd 8352 at ¶30 (*emphasis added)*.

transferability was needed to increase competition in the cellular marketplace.[15] The Commission specifically requested comment on whether number blocks should be transferable so that resellers could use their ability to move customers (with their numbers) to other carriers as leverage to obtain better service at lower prices.[16] Even under then-existing competitive conditions, the FCC deferred its decision to the number portability proceeding and then, in that proceeding, specifically declined to address number transferability, deferring the issue again to the CMRS Interconnection Proceeding.[17] The Commission has yet to address the issue of number transferability. Wireless carriers are thus not obligated under the current rules to port blocks of numbers in response to reseller requests.

WorldCom states that LNP is critical to maintaining a vibrant resale market because of the sunset of the resale rule on November 24, 2002.[18] Not only is there no logical connection; the sunset of the resale rule is further evidence of why LNP is not needed. The FCC provided for the sunset of the resale obligation because of the growth of competition in the wireless industry.[19] Competitive conditions do not warrant a special

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15 *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, Second Notice of Proposed Rule Making, CC Docket No. 94-54, 10 FCC Rcd 10666 at ¶ 94 (1995) (*Second NPRM*).

16 *Second NPRM,* CC Docket No. 94-54, 10 FCC Rcd 10666 at ¶ 94.

17 The Commission stated: "Because the record does not establish any relationship between number transferability and number portability, and does not identify the technical issues involved in providing number transferability, we decline to address the provision of number transferability in this proceeding. We note that the issue has been raised in the *CMRS Interconnection Second NPRM* and will be addressed in CC Docket No. 94-54," which is the *CMRS Interconnection* proceeding. *See Telephone Number Portability,* First Report and Order and Further Notice of Proposed Rulemaking, CC Docket 95-116, 11 FCC Rcd 8352 at ¶171 (1996) (*Telephone Number Portability FNPRM)*. The FCC proceeding terminated CC Docket No. 94-54 in 2000 without further addressing the issue. *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services,* Fourth Report & Order, 15 FCC Rcd 13523 (2000) at ¶ 33.

18 WorldCom Comments at 8-9.

19 *See Memorandum Opinion and Order on Reconsideration,* FCC 99-250 (rel. Sept. 27, 1999), 1999 WL 759700. Any anti-competitive or discriminatory practices by wireless carriers

rule designed to protect particular carriers. If forbearance from wireless LNP is granted, wireless resellers will be in exactly the same position as facilities-based carriers when competing to win new customers from other carriers. Wireless resellers will need to compete based on customer service and price plans – the factors that are most important to wireless customers today.

2. State Commissions

The Ohio Commission asserts that the ability to change providers without barriers is a sign of "true" competition.[20] However, the need to change numbers obviously was not a significant barrier to the 20% of wireless customers who changed carriers last year.[21] In any event, no market is "friction-free." There is always some cost associated with changing service providers (*e.g.*, changing a license plate and registration when buying a new car from a different dealer). In the wireless market, customers will almost always have to change handsets when they change carriers.

The competitive market for internet services provides an interesting parallel. If a customer of America Online wants to change to Verizon's internet service, she must change her e-mail address (from XYZ@AOL.com to XYZ@Verizon.net). Surely, the FCC would not consider mandating ISP name portability to facilitate changes between ISP providers. While not ideal, customer XYZ can notify friends, family and business

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upon sunset of the resale rule will be subject to complaint procedures and penalties under other statutory provisions of the 1996 Act designed to protect all competitors. WorldCom erroneously asserts that without LNP, the only way reseller customers can keep their numbers is to migrate to the underlying facilities – based carrier. (WorldCom Comments at 8.) If a WorldCom customer operating on Verizon Wireless' network wishes to switch to become a Verizon Wireless (retail) customer today, that customer is assigned a new phone number.

[20] PUCO Comments at 5.

[21] Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Sixth Report*, FCC 01-192 (released July 17, 2001) at 23.

associates of a change in e-mail address through e-mail, voice-mail or a low-cost wireless phone call. If that same customer chooses to switch to Verizon Wireless service (from a competing wireless carrier) at the same time, her notification could include a number change as well. With today's communication technology, communicating a number change is certainly not a barrier to competition.

Opponents' comments suggest that LNP is necessary to protect consumers, but provide no evidence that customers are suffering harm today without LNP. The forbearance standard specifically addresses the goal to protect consumers in the second prong. In the 1999 *Forbearance Order,* the FCC made specific findings that the LNP service was neither necessary to ensure just and reasonable rates nor to protect consumers.[22] As Verizon Wireless' forbearance petition stated, and industry churn rates confirm, sustained and increased competitive pressure ensures consumer protection as much today as it did in 1999, if not more so. As Chairman Powell has stated, "History and, more importantly, Congress have judged that competition is a superior device for maximizing consumer welfare."[23] The prospect that some consumers may like the LNP service is not sufficient evidence to overcome the legal standard imposed by Section 10.

Notably, the state commenters point to no evidence (such as systematic customer complaints, beyond a few anecdotal examples) to support the contention that wireless LNP ranks high on the list of customer needs or that it is necessary to protect consumers any more today than in 1999 when temporary forbearance was granted. There simply has been no public demand – either in the regulatory arena or the marketplace – for wireless LNP. Without some demonstrable evidence that customers need LNP to enable

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[22] *See Forbearance Order* at ¶ 19.

competition or to protect the public interest, the FCC must forbear from imposing the significant costs and burdens of wireless LNP.

B. Congress Never Intended To Pursue Landline Competition By Imposing Regulatory Burdens on CMRS Carriers

Some state commenters allege that wireless LNP is necessary to promote competition in local exchange markets.[24] It is ironic, and counter-intuitive, to seek to infuse competition from wireless carriers into the landline market by imposing *more* regulatory burdens on the wireless industry. To the contrary, shackling wireless carriers with costly LNP obligations only will make it harder for them to compete for landline customers through lower prices. In fact, wireless carriers are providing significant competitive pressure on landline carriers today through competition for minutes of use. Over 50% of American households subscribe to mobile service, with an average monthly use of 422 minutes, an increase of 32% since 2000.[25] Surely, some of these minutes replaced landline usage. Contrary to the assumptions inherent in the opponents' assertions, customer welfare may actually be maximized when customers have the security benefits of a landline phone, along with the mobility and economic benefits of a separate wireless phone. Landline displacement is not necessarily in the public interest.

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[23] Dissenting Statement of (then) Commissioner Michael K. Powell, *Rate Integration Order* at 7.

[24] Notably, mobile number portability in Hong Kong only facilitated portability among and between mobile providers; it did not involve the added complexities of porting between landline and mobile providers.

[25] *See* J.D. Power and Associates, "Wireless Phone Penetrating Among U.S. Households Climbs Above 50 Percent as More First-time Subscribers Enter the Marketplace" (Sept. 26, 2001).

Some state commenters also assert the need for "regulatory parity," arguing that wireless carriers should face the same regulatory burdens as wireline carriers.[26] Notably, not a single landline carrier opposed the petition by asserting the need for "regulatory parity." In any event, the short answer to this claim is that when Congress wanted regulatory parity, it knew how to require it. In this case, Congress determined that competition could be facilitated in landline markets by mandating landline LNP, but endorsed differential treatment when it excluded CMRS carriers from this mandate. Imposition of LNP regulation on wireless carriers was and is flatly inconsistent with Congress' intent to spur wireless competition through deregulation, as well as with the express language of section 251(e), which imposes LNP on LECs, not CMRS providers.

Significantly, wireless to wireline porting still presents several unresolved problems. The most noted problem for wireless to wireline integration may be the length of the porting interval. The potential solutions for shortening the wireless/wireline porting interval provide for a period of "mixed service" (*i.e.*, calls can be placed from both the wireless and wireline handsets). The mixed service scenario poses problems for 911 service because Public Safety Answering Points ("PSAPs") may not be able to reach the calling party. Because calls can be made from both the wireline and wireless handset to 911, depending on the stage of the port activation process, the PSAP's callback to reconnect with the calling party may be misrouted. Given the importance of shorter porting intervals and reliable emergency communications, the NANC's Local Number

[26] PUCO Comments at 2, 9; California Public Utilities Commission ("CAPUC") Comments at 7.

Portability Administration Working Group ("LNPA") has documented these issues and others related to wireless/wireline porting.[27]

Any remaining concerns that wireless LNP might be necessary for "wireless to wireline" or "wireless to wireless" competition in the future, should market conditions or consumer preferences change dramatically, do not justify imposing LNP now. If future market trends provide the factual predicate and legal basis to impose LNP, the FCC could re-institute any rules necessary to alleviate specific harms to consumers, or could re-invigorate competitive markets based on identified market failures.

III. THE COMMISSION BEARS THE BURDEN TO JUSTIFY WHY THE LNP RULE MUST BE RETAINED GIVEN THE CURRENT STATE OF WIRELESS COMPETITION

ASCENT asserts that Verizon Wireless bears an "exceedingly high" burden in demonstrating that Section 10 mandates forbearance from enforcing wireless LNP.[28] According to ASCENT, "absent a strong countervailing public interest showing, there can be no justification for the relief Verizon seeks here."[29] Citing to the Commission's 1998 CMRS *Rate Integration Order*, ASCENT asserts that "[t]he burden of justifying Commission forbearance falls upon the petitioning party."[30] ASCENT's interpretation of Section 10 is inconsistent with the language and intent of the 1996 Act and ignores the Commission's obligation to ensure the ongoing validity of its regulations. As (then) Commissioner Powell urged in his dissenting opinion to the *Rate Integration Order*, "forbearance requests require [the FCC] to actively evaluate continued regulation and not

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27 *See* North American Numbering Council Local Number Portability Administration Working Group, *3rd Report on Wireless Wireline Integration*, September 30, 2000, at 16-18.

28 ASCENT Opposition at 4.

29 *Id.* at 19.

30 *Id.* at 20.

simply play the role of judgmental skeptic when presented with pleas to cede regulation to competitive conditions."[31]

To the extent that the Commission has imposed a burden on a petitioner, it is to make a *prima facie* case that the standard for forbearance is met.[32] In this case, Verizon Wireless' petition has made the *prima facie* case for forbearance.[33] By the terms of the statute, the Commission may retain the wireless LNP mandate only if it determines that the regulation is *necessary* to serve Section 10(a)(1) and (2) objectives and that forbearance *is inconsistent with the public interest*. As the petition and the record it has generated show, the numerous tangible benefits of forbearance clearly outweigh the speculative benefits of wireless LNP. The Commission must therefore forbear from enforcing this regulation.[34]

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[31] Dissenting Statement of (then) Commissioner Michael K. Powell, *Rate Integration Order* at 9.

[32] *See Petition of U S West Communications, Inc. For Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA*, 14 FCC Rcd 19947, ¶ 32 (1999) ("petitioners must make a *prima facie* showing that sufficient competition exists so that application of the [relevant] rules is not necessary to ensure that [petitioner's] rates and practices for the services in question are just, reasonable, and not unreasonably discriminatory"), *rev'd on other grounds*, *AT&T Corp. v. FCC*, 236 F.3d 729 (D.C. Cir. 2001). ASCENT's reliance on the Commission's decision regarding forbearance from enforcing rate integration on CMRS providers is inapposite. *See* ASCENT Comments at 20, n.49. The Commission determined in that proceeding that CMRS providers' interexchange services were subject to Section 254(g), a determination which the U.S. Court of Appeals for the D.C. Circuit subsequently vacated, rendering the issue of Section 10 forbearance moot. *See GTE Service Corp. v. FCC*, 224 F.3d 768 (D.C. Cir. 2000).

[33] *See* Verizon Wireless Petition at 15-30.

[34] In this regard, speculative benefits with respect to wireless-wireline competition are insufficient to warrant the imposition of wireless LNP. The Commission must determine that regulation is *necessary* to promote competition, not merely potentially helpful. As the Commission itself has stated: "Mere possibilities are not of decisive significance in competitive analysis. '[T]he agency's responsibility is to deal with "probabilities," not "ephemeral possibilities."'" *Bell Atlantic Mobile Systems, Inc. and NYNEX Mobile Communications Company*, 12 FCC Rcd 22280, ¶ 9 (1997) (citing *SBC Communications, Inc. v. FCC*, 56 F.3d 1484, 1494 (D.C. Cir. 1995), *quoting United States v. FCC*, 652 F.2d 72, 99 (D.C. Cir. 1980) (en banc).) Congress' use of the term "necessary" in Section 10 imposes a significant burden on the Commission, requiring a strong link between the regulation at issue and its purported competitive benefit, akin to Congress' use of "necessary" in Section 253(b). *See Public Util. Comm'n of Texas*, 13 FCC Rcd. 3460, ¶ 85 (1998); *New England Public Telecommunications Council*, 11

Moreover, in enacting the 1996 Act, Congress imposed an affirmative obligation on the Commission to deregulate competitive markets, adopting statutory mechanisms to implement this objective. It did not simply ratify the Commission's existing authority to amend its rules in a conventional notice-and-comment rulemaking proceeding. Rather, it intended to "promote competition *and reduce regulation* in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies" and "to provide for a *pro-competitive, de-regulatory national policy framework* designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."[35] Congress specifically aimed to create a deregulatory framework for CMRS competition through Section 332(c)(i), pursuant to which the Commission must "ensur[e] that unwarranted regulatory burdens are not imposed" on CMRS carriers in competitive markets.[36]

The provisions of the 1996 Act must be interpreted in this deregulatory context.[37] As the Commission itself has noted, the agency now has an "overall mandate to eliminate regulations wherever possible, consistent with the public interest."[38] There is no clearer

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FCC Rcd. 19713, ¶ 24 (1996); *see also Sullivan v. Stroop*, 496 U.S. 478, 484 (1990) (noting presumption that identical words used in different parts of the same statute are intended to have same meaning).

[35] *See* Telecommunications Act of 1996, Pub. L. No. 104-104, preamble, 110 Stat. 56 (1996), H.R. Conf. Rep. No. 104-458, at 113 (1996) (emphasis added).

[36] *See Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services, Second Report and Order* 9 FCC Rcd 1411, ¶ 15 (1994).

[37] *See City of Auburn v. Qwest Corp*., __ F.3d __, No. 99-36173, at n.5 (9th Cir. July 10, 2001); *Puerto Rico Tel. Co. v. Telecommunications Regulatory Bd. of Puerto Rico*, 189 F.3d 1, 7-8 (1st Cir. 1999).

[38] *See 2000 Biennial Regulatory Review of Part 68 of the Commission's Rules and Regulations, Report and Order*, 15 FCC Rcd 24944, ¶ 12 (2000); see *also Classic Telephone, Inc.*

manifestation of Congress' intent than the forbearance provisions of Section 10 of the Act.[39] Consistent with Congress' deregulatory objectives, Chairman Powell has declared that "the language of section 10 places on the FCC a greater burden to demonstrate that all three prongs of the forbearance test are or are not satisfied, whether it be a rule or a statutory provision."[40] Section 10's legislative history underscores the importance Congress places on deregulation as a policy objective. For example, the initial versions of Section 10 passed by the House and Senate gave the Commission the *option* to forbear, while the enacted version makes forbearance *mandatory* when the criteria are met, thus limiting the Commission's discretion.[41] Congress clearly intended that Section 10 would render the Commission's deregulatory efforts *easier*.[42] Indeed, Section 10(c) requires that a forbearance petition "*shall be deemed granted* if the Commission does not deny the petition for failure to meet the requirements for forbearance under subsection (a) within one year after the Commission receives it."[43] That the Act allows forbearance to proceed where the Commission fails to act underscores Congress' preference for forbearance, and is flatly inconsistent with the notion that Section 10 formally imposes a "burden of justifying forbearance" on the petitioner – much less an "exceedingly high" one.

Petition for Emergency Relief, Sanctions and Investigation, 12 FCC Rcd 15619, 15637 ¶ 34 (1997) (Commission must "remain mindful" of 1996 Act objectives).

[39] 47 U.S.C. §§ 160. As Chairman Powell has stated, "Section 10 is a very important provision of the pro-competitive, deregulatory 1996 Act." *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 13 FCC Rcd. 16857, 16940 (1998). *See also* 47 U.S.C. § 161 (requiring the Commission periodically to review its regulations and remove those that are no longer needed).

[40] *See Petition of Ameritech Corporation for Forbearance from Enforcement of Section 275(a) of the Communications Act of 1934, as amended*, 15 FCC Rcd 7066, 7047 (1999) (Comm'r Powell, dissenting, citing 13 FCC Rcd. at 16939-46).

[41] *See* S. Rep. No. 104-23, at 107 (1995) ("Senate Report").

[42] *See* H.R. Rep. No. 104-204, at 89 (1995); Senate Report at 2, 85

[43] 47 U.S.C. § 160(c).

Under ASCENT's interpretation, a petition for Section 10 forbearance would be virtually indistinguishable from a Section 1.2 petition for rulemaking, but for the one-year deadline for Commission action applicable to Section 10. Such a reading would render Section 10 largely superfluous – essentially subsuming it in the rulemaking provisions of the APA.[44] All provisions of a statute must be given full effect.[45]

Finally, even in the absence of Section 10 forbearance, the Commission has an overarching "obligation to monitor its regulatory programs and make adjustments in light of actual experience"[46] and a "duty to finetune its regulatory approach as more information becomes available . . . ."[47] This duty is particularly warranted where, as here, the Commission "pursue[s] plans and policies bottomed on informed prediction."[48] On this basis alone, the Commission is required to revisit and modify its wireless LNP mandate.

IV. IRRESPECTIVE OF THE BURDEN OF PROOF, THE PETITION AND SUPPORTING COMMENTS JUSTIFY FORBEARANCE

A. Significant Costs Can Be Avoided If Carriers Are Required Only to Implement TBNP Without Additional LNP Obligations

Wireless LNP is not cost-free. As described in detail in Verizon Wireless' petition, there are significant customer service, marketing, and business operation costs, as well as third party vendor transaction costs that can be eliminated or reduced

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44 *See* 5 U.S.C. §§ 553, 706.

45 *See FDA v. Brown & Williamson Tobacco Corp.*, 120 S.Ct. 1291, 1301 (2000) (must interpret statute to "fit, if possible, all parties into a harmonious whole"); *Walters v. Metropolitan Educational Enterprises*, 117 S.Ct. 660, 664 (1998) (statutes must to be interpreted to give each word some operative effect); *United States v. American Trucking Ass'ns*, 310 U.S. 534, 542-543 (1940) (courts "give effect to the intent of Congress" and look to purpose of act if meaning of language leads to futile results"); *Sutten v. United States*, 819 F.2d 1289, 1295 (5th Cir. 1987) (must assume that Congress intended its enactment to have meaningful effect).

46 *Telocator Network of America v. FCC*, 691 F.2d 525, 550 n.191 (D.C. Cir. 1982).

47 *See Id*.

significantly through a grant of forbearance.[49] The record supports the petition on this point. Comments of other carriers, including Cingular, Voicestream and Sprint PCS,[50] show that wireless carriers will incur significant costs for LNP activities/ functions, including:

- Service Bureau/ SOA: report fees; porting transaction fees
- Neustar NPAC Database: monthly work fees (NECA 4); porting transaction fees
- Telecordia: LERG updates to mark codes LNP capable
- Switch Vendors: software loads applicable for LNP; right to use fees
- Information Technology
- Roaming: revenue assurance (testing and additional billing personnel); intercarrier services (communication, troubleshooting); roamer settlement
- Customer Service: significant increase in staff, facilities, training, tools
- Marketing: bill inserts; confirmation letters to ported customers; research

Verizon Wireless estimates that the incremental porting costs, beyond those it will expend to implement pooling will total approximately $62 million in year one, with on-going estimated annual costs of at least $40 million per year. This estimate does not include the porting transaction costs that will be assessed by NeuStar as the porting administrator, as those costs have not been disclosed to Verizon Wireless by the FCC or NeuStar. Sprint PCS has estimated annual recurring costs of $52 million,[51] and Cingular estimates LNP implementation costs of over $250 million over the first five years.[52]

These costs tell only part of the story about the burden LNP poses for CMRS carriers. As Sprint PCS' reply comments explain, wireless carriers are concerned about spreading the same technical personnel too thin when implementing multiple, complex

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48 *See Id.*

49 *See* Verizon Wireless Petition at 12 – 15 and the Appendix.

50 Joint Comments of Voicestream and U.S. Cellular at 16-17; Cingular Comments at 3; Sprint PCS Comments at 6. Recurring cost estimates cannot be precise because they depend on the number of customers who actually port after evaluating the pros and cons of doing so.

51 Sprint PCS Reply Comments at 3.

52 Cingular Comments at 16.

mandates at the same time.[53] As prices for CMRS services fall, carriers are facing competitive pressure to reduce costs. The same numbering, information technology systems, and switch translation experts can be stretched only so far without impairing quality and efficiency.

Resellers allege that the costs and burdens identified by Verizon Wireless are not sufficient to justify forbearance. Aside from pointing to no legal authority for this claim, the resellers do not acknowledge that they incur none of the burden or cost directly. Just as many resellers are spared the burden of complying with semi-annual NRUF reporting requirements and other conservation measures, they have not been working over the past four years to develop a solution to the MIN/MDN separation problem or to ensure that roaming capabilities will be retained in a pooling or porting environment. Nor are they investing in service bureau or SOA arrangements or preparing to handle multiple inter-carrier communications. However, if a porting error is made, or the NPAC is overwhelmed with transactions, the facilities-based wireless carriers must be prepared to respond to their resellers.

B. The Incremental Benefits of Wireless LNP Are Speculative Because of the Existing Levels of Churn

The State Coordinating Group ("State Staff") assert that "it seems an obvious conclusion that wireless customers would also consider the need to change telephone numbers an impediment to changing service providers."[54] In fact, the most obvious fact

[53] Sprint PCS Reply Comments, Huber declaration at ¶¶ 5-6, 11; Castañon declaration at ¶10, 11, 30-32.

[54] State Staff Comments at 7.

in this proceeding is that *the absence of wireless LNP did not impede approximately 20 million customers from changing wireless service providers in 2000*.[55]

Moreover, these comments make no effort to identify and quantify the possible competitive benefit of wireless LNP. A proper analysis, in any event, would count only the incremental benefit (*i.e.*, the customers who will port *only* if LNP is available) in determining the benefit to compare to the implementation and operational costs of wireless LNP. The question must not be "would customers like to keep their number when they change service providers," but rather, "how many customers are impeded from changing service providers because they cannot keep their phone number?" And, of that subset of customers, "how many would choose to retain their phone number if wireless LNP resulted in an increase in service prices or activation time, or a porting transaction fee?" More customers would likely choose to port their numbers if porting is "cost-free" than if porting comes at a price.[56] Even if the Commission assumes that every customer who churns between carriers would choose to port his or her number if allowed, that does not prove that porting is *necessary* to enable competition or to promote the public interest. Section 10 is not a customer preference test.

V. OPPONENTS FAIL TO PROVIDE ANY FACTS CONTRADICTING VERIZON WIRELESS' EXHAUSTIVE SHOWING THAT POOLING CAN AND WILL BE DONE WITHOUT LNP.

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[55] Applying a 20% estimated churn rate to a subscriber base of 109.5 million demonstrates that approximately 20 million customers switched carriers in 2000. *See Sixth Report* at 21, 23.

[56] The Hong Kong report relied upon by the Resellers also demonstrates that some of the alleged consumer benefits of LNP may be illusory. *See* ASCENT Comments at 8, 11-12 (citing Feasibility Study and Cost Benefit Analysis of Number Portability for Mobile Services in Hong Kong (May 1998) ("Hong Kong study")). For example "Type 2" benefits are estimated for expected price decreases to consumers as a result of more competition among providers, making them more efficient. However, given the high level of competition that already exists in the U.S. wireless market, and the likely need to pass some of the increased costs of LNP onto customers, it is unlikely there will be any price-related benefit to U.S. customers.

In its petition, Verizon Wireless explained in detail the tasks common to pooling and number portability and delineated those additional tasks required only for number portability. The common tasks are related to the fact that pooling and porting share the same, complex LRN-based network architecture.[57] In 1999, CTIA obtained temporary forbearance from the Commission, in part based upon the Commission's finding that the wireless industry needed more time to work through the complex, unique technical network problems related to implementing LRN, including separating the MIN from the MDN.

Verizon Wireless did not file its forbearance petition to achieve more time to resolve the MIN/MDN separation and the associated network impacts. Verizon Wireless is on target to deploy pooling in November 2002. Instead, Verizon Wireless' petition was prompted by the multiple *additional* tasks, *beyond* the network tasks, required for single number portability.

A. Verizon Wireless Will Participate Fully In Pooling

Some State commenters reflect a basic misunderstanding of Verizon Wireless' petition by raising concerns that Verizon Wireless has proposed something other than full thousands block number pooling.[58] Verizon Wireless' petition does not propose a "wireless alternative" or limited version of full TBNP. Verizon Wireless recognizes the importance of being able to pool with both wireline and wireless carriers, to donate and

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[57] Notably, the mobile industry in Hong Kong did not employ the LRN technology. *See* Hong Kong study. If Hong Kong carriers faced the same network and back office systems challenges as U.S. carriers, the costs of implementing mobile number portability in Hong Kong likely would have been significantly higher than reported.

[58] *See* NHPUC Comments at 10; NYPSC Comments at 2; NARUC Comments at 2-3.

accept numbers in contaminated thousands blocks, and otherwise meet the technical requirements of TBNP, commensurate with existing industry guidelines.[59]

Every wireless carrier that filed comments supported Verizon Wireless' analysis that the network-related functions of LNP can be divorced from the customer-related ones, and implemented to enable full-fledged pooling. Verizon Wireless has requested relief only from those additional tasks needed for single number portability. The commenters who questioned the ability of wireless carriers to fully participate in pooling did not substantiate their concerns.[60]

The State Staff comments and the comments of the California PUC allege that there is a "pattern" in the wireless industry's filings related to LNP. It is true that many in the wireless industry have never believed that portability is needed in this competitive environment and CTIA sought an extension of time to implement LNP.[61] Since 1996, however, technology has evolved, competition from new PCS entrants has developed and grown, and other circumstances, including the numbering crisis, have converged to reshape carriers' positions not only on number portability, but also on pooling.[62] Careful examination of the history of various dockets belie the allegations of any "pattern," and these allegations do nothing to help the FCC resolve these important issues.

Until recently, the industry's primary focus for implementing pooling and LNP has been on overcoming the technical difficulties presented by MIN/MDN separation and

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[59] NARUC stated its opposition to any relief from full participation in pooling. NARUC comments at 2. As indicated above, Verizon Wireless' petition does not contemplate anything other than full CMRS participation in TBNP.

[60] *Id*; NYPSC Comments at 2; NHPUC Comments at 10.

[61] *See* State Staff Comments at 3; CAPUC Comments at 5.

[62] For example, when the idea of wireless participation in LNP was introduced, the PCS carriers supported it as a necessary tool for wireless competition with incumbent cellular providers. Now, Sprint PCS is one of the strongest proponents of forbearance.

its impact on roaming. That focus was appropriate given the magnitude of the task, but yielded an inaccurate shorthand, "LNP is a prerequisite for pooling." While the shorthand identifies a link between the two services, its imprecision led to the current LNP rules and to the imposition of the November 2002 deadline. Separated from its pooling component, which will be achieved by November 2002 -- LNP is not needed.

B. Previous Proposals For Alternative Forms Of Pooling Should Not Be Confused With Verizon Wireless' Petition

Some of the confusion regarding Verizon Wireless' proposal may have resulted from previous debates over "pooling before portability," – or, more correctly, implementation of an inferior code sharing arrangement before 2002. Verizon Wireless is not proposing an inferior version of pooling; it intends to participate fully in pooling, including any applicable rules and guidelines that will govern all carrier participants.

One example of an inferior version of "pooling" was explored by numbering experts on the North American Numbering Council ("NANC") in 1999. After the FCC granted CTIA's Forbearance Petition, the NANC's Wireless Number Portability Subcommittee ("WNPSC") evaluated a "wireless pooling alternative" that would have eliminated the need for wireless carriers to implement Phase 2 of the LNP mandate, including the MIN/MDN separation, LRN routing, and NPAC communication requirements. Under this alternative, only one wireless service provider could participate in a pooled NPA NXX (and that service provider would need to be the code holder, *i.e.*, the LERG assignee) and wireless carriers could contribute only non-contaminated thousands-blocks. The NANC did not recommend pursuing this second-best solution, recognizing that it would distract from development and implementation of the network changes required for "real" pooling capability. Similarly, Verizon Wireless is not

proposing this type of restrictive pooling. It is working with the industry to implement all of the network elements necessary for full participation in TBNP in November 2002.

C. Verizon Wireless Is Working Aggressively With Its Vendors

The State Staff also raised concerns regarding vendor readiness for pooling.[63] Clearly, there is much for the industry and its vendors to achieve over the coming months, all without adversely impacting the integrity of wireless networks. These tasks are all the more difficult given reduced vendor resources due to the faltering economy. But these concerns do not in any way show that forbearance from the distinct LNP capability should be denied. Verizon Wireless is working aggressively with its vendors to meet its obligations under the rules. Verizon Wireless has informed its vendors that the network infrastructure changes necessary for pooling and porting are a top priority, alongside network deliverables needed for E911, TTY, CALEA and 3G. In addition to these important services, the National Communications Systems ("NCS"), an agency of the Executive Branch, recently approached carriers and the FCC regarding creating Priority Access service for wireless networks on an accelerated schedule.

Verizon Wireless has requested and received commitments from vendors to provide LRN and MIN/MDN network features on schedule. Specifically, Verizon Wireless notified vendors that requisite network hardware and software changes to support field testing with our network is needed by April 1, 2002. Lucent and Nortel have indicated that they will be able to satisfy this request, and Motorola states that its software release can be available for a First Office Application ("FOA") test by May 1, 2002. Lucent is conducting an FOA of its network feature with another carrier and plans to complete that process in November 2001. Upon successful completion of the FOA,

Lucent's feature will be generally available. Nortel currently is conducting Verification Office ("VO", a/k/a FOA) test of its MTX10 switch software release with Verizon Wireless in Columbus, Ohio and Los Angeles, California.

Internally, Verizon Wireless has established an interdisciplinary core team of experts from various parts of the Company to coordinate work and complete all tasks related to MIN/MDN separation, LRN routing, database upgrades, SOA and service bureau requirements, troubleshooting systems and process requirements, intercarrier and NPAC testing, and any other necessary system or process changes. Much of the work and resources that will be expended on additional LNP tasks (including training, inter-carrier communication, customer care and information technology) can be saved and refocused to meet other mandates if the FCC grants the forbearance petition.

D. Conservation Of Numbering Resources Is An Important Goal That Deserves Focused Resources

The Commission must recognize that TBNP is a major undertaking for wireless carriers, one that is costly and resource-intensive. Regulatory and industry resources should be focused on ensuring that wireless carriers can and do pool by November 2002.

Recently, the FCC issued a Number Resource Utilization Report examining the effect of its comprehensive number resource optimization rules, including TBNP, based on an analysis of December 2000 NRUF data. The report demonstrates the efficacy of pooling, including the potential benefits of pooling when wireless carriers can participate. Approximately twelve percent of the potentially donatable thousands-blocks were held by cellular and PCS providers at the end of 2000. Unlike LNP, significant, tangible

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[63] State Staff Comments at 11.

consumer and social benefits will be achieved when wireless carriers begin to participate in pooling.

While there is no evidence that wireless LNP in and of itself would improve number efficiency, as suggested by some states,[64] there is a real risk that the mandate will do just the opposite by undermining "reverse billing" offerings by LECs. Historically, wireless carriers have utilized far fewer rate centers than have LECs to serve their customers, and consequently, have achieved much better number utilization than most LECs.[65] The availability of reverse billing offerings from LECs has enabled wireless carriers to forego opening new NXX codes in every LEC rate center (and local calling area).[66] Recently, Southwestern Bell filed a tariff amendment in Missouri to discontinue reverse billing (referred to as "Area Wide Calling Plan") for wireless carriers that are

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[64] *See* Maryland Public Service Commission ("MDPSC") Comments at 2; Public Utility Commission of Texas ("TXPUC") Comments at 3; PUCO Comments at 4. Verizon Wireless could not find any examination of portability *per se* as a conservation measure in the record of the NRO proceeding or the LNP dockets. In response to the states' assertion that portability, not pooling, would conserve large amounts of numbers presently "stranded" by aging practices when customers churn, Verizon Wireless agrees with the reply comments filed by Sprint PCS. *See* Sprint PCS Comments at 10-11. Specifically, the states appear to have applied an annual churn percentage (instead of a monthly churn percentage) erroneously to examples used to demonstrate the incidence of numbers "stranded" through aging "at any given time." At any given time, numbers in the aging process represent a very small percentage of numbers held by carriers. Aging does not result in numbers being "stranded" since they are an active part of carriers' number inventories. Not only are aging numbers considered available for use by carriers, many of which age them for as little as thirty days where numbering resources are tight, but the FCC's number utilization formula places aged numbers in the denominator, deeming these numbers "available" for use by the carrier. Aging numbers count against a carrier when demonstrating the need to obtain new numbering resources. In fact, a carrier can often recycle a number from its aging pool quicker than it can receive a new NXX code from NANPA, due to the 66-day LERG provisioning cycle.

[65] *Number Resource Utilization in the United States as of December 31, 2000,* released by the FCC June 13, 2001, Tables 1 and 2.

[66] Under reverse billing, wireless carriers pay tariffed or negotiated fees to a LEC in exchange for the LEC providing toll-free calling to its customers for land-to-mobile calls within certain exchanges. Since wireless carriers earn revenue for each call that is completed by a wireless customer, there is a strong business objective to minimize barriers to land-to-mobile calls, such as landline toll charges.

subject to number portability.[67] If other LECs act similarly, wireless carriers may seek NXX codes in additional rate centers to preserve local landline to mobile calling.[68] Consequently, one of the many unfortunate impacts of wireless LNP will be to disrupt an historical business solution between wireless and landline carriers that has improved wireless number utilization in the past.

Wireless carriers have invested considerable work and resources into overcoming the technical obstacles to pooling that are unique to wireless networks. They should not be distracted as they enter the home stretch by an unnecessary LNP mandate. On March 12, 2001, CTIA, Cingular and Sprint filed petitions for reconsideration in the number resource optimization proceeding challenging the Commission's decision not to adopt a transition period between the date CMRS providers deploy LNP and pooling.[69] Given the comments by wireless carriers citing technical hurdles and network reliability concerns, the record clearly supports the need to decouple the two mandates, especially given that the deadline falls during the busy holiday season.[70] While Verizon Wireless has demonstrated that complete forbearance under Section 10 should be granted on competition grounds, an extension of time in which to deploy wireless LNP is justified for wholly separate network reliability reasons. Verizon Wireless agrees with

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67 *See* Missouri Wireless Carrier Interconnection Service Tariff. P.S.C. Mo. – No. 40. (Effective: September 14, 2001).

68 Since wireless carriers will not be pooling capable until November 2002, NANPA will need to assign wireless carriers full NXX codes to enable them to establish a local presence in LEC rate centers.

69 *See* Petitions for Reconsideration filed by Cellular Telecommunications and Internet Association at 12, Cingular Wireless at 12-13 and Sprint Corporation at 8-11, filed March 12, 2001, in CC Docket No. 99-200.

70 *Id.*

commentors that pooling and LNP should not be implemented simultaneously. The FCC should grant the reconsideration petitions.[71]

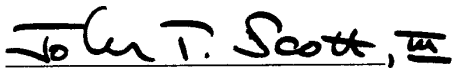
VI. CONCLUSION

For the reasons provided above and in Verizon Wireless' petition for partial forbearance, the Commission should forbear from requiring CMRS carriers to provide LNP, while continuing to require CMRS carriers to make all necessary network changes to participate fully in thousand block number pooling. The Commission has "an obligation to validate or justify continued regulation in light of competitive conditions."[72] A fresh look at the wireless LNP rule in today's competitive environment will reveal that it is not needed to promote competition or to protect the public interest. The public interest will be served best by allowing wireless competition to continue to flourish, unfettered by an obstructive LNP mandate, and by targeting carrier resources towards regulatory mandates that are truly necessary to promote public safety and welfare.

Respectfully submitted,

VERIZON WIRELESS

By:



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[71] ALLTEL Comments at 7-8; AT&T Wireless Comments at 2-3, 16-19; Cingular Comments at 19; Joint Comments at 4-6.

[72] *See* Dissenting Comments of (then) Commission Michael K. Powell, *Rate Integration Order* at 4.

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